THE TELECOMMUNICATIONS ACT OF 1996

The Telecommunications Act of 1996 (the Act) is the first major statutory change to Communications law in over 60 years. The primary purpose of the Act is to increase competition in various communications markets and to reduce regulation of those markets. The law addresses telecommunications, cable and broadcast services.

The new law opens all telecommunications markets to competition, with particular emphasis on the local exchange market. Currently, in most places, this market is a monopoly dominated by the Bell Operating Companies (BOCs) or other Local Exchange Carriers (LECs).

The Act allows cable television companies, interexchange companies (IXCs), subsidiaries of utility companies, Competitive Access Providers (CAPs) and others to enter and compete in the local exchange market.

In order to encourage competition in the local exchange market, the Act has a number of provisions requiring LECs to open their networks to their competitors in a fair, non-discriminatory way. Since most new competitors do not have facilities-based networks in the local exchange market, access to and interconnection with the LECsí networks, facilities, service and equipment is key to developing competition in that market.

The Act requires all telecommunications carriers to interconnect with the facilities/equipment of others, as well as requiring them to refrain from installing network features that do not comply with Federal Communications Commission (FCC) standards.

State and local governments may not enact laws, regulations or rules which act as barriers to market entry.

Telecommuncations carriers that wish to have access to an interconnection with a LEC's facilities may achieve such access by negotiation of a voluntary agreement for interconnection and access with the LEC. Such agreements must include a detailed schedule of itemized charges. A party to the negotiation may petition for State Public Utility Commission arbitration of disputes over interconnection and access. If arbitration is sought, the decision of the State Commission arbitrator is binding. An agreement reached through binding arbitration must include all of the Act's requirements for interconnection, access, and pricing.

The State Commission is the approval authority for both voluntarily negotiated agreements and those reached through binding arbitration. The State Commission must act to approve or disapprove the agreement within 90 days after it is filed or it is deemed approved. State courts do not have jurisdiction to review the State Commission's action; jurisdiction rests solely with the federal courts.

If it receives no request for interconnection and access, a BOC may file a general statement of its terms and conditions for interconnection and access with the State Commission. The State Commission will approve this general statement only if the statement complies with statutory requirements for interconnection, access, and pricing. The BOC has a duty to negotiate individual agreements with requesting carriers even if a general statement of terms and conditions has been filed and approved.

BELL OPERATING COMPANIES

From 1984 until 1996, the AT&T Consent Decree imposed a number of restrictions on the activities of the BOCs. The Act allows development of competition in the local exchange market by lifting many of these restrictions. The BOCs may offer InterLATA (long distance) service, video programming, electronic publishing and alarm monitoring, or manufacture equipment, subject to a variety of conditions and time lines found in the Act.

A BOC may provide in-region InterLATA service when it has entered into interconnection and access agreements with a facilities-based competitor for telephone exchange service to residential and business subscribers, met the requirements of a "competitive checklist" found in the Act and received FCC approval. The FCC must consult with the Department of Justice and affected State Commissions before approving in-region InterLATA service. The Department of Justice evaluation is not binding on the FCC but will be given substantial weight. Approval will be on a state-by-state basis.

BROADCASTING

The Act liberalizes limits on the number of radio and television stations one person or company can own. It allows broadcast stations to own or control cable networks and addresses the length of license terms. There are also provisions dealing with advanced television.

CABLE TV

The Act deregulates all cable rates, except rates for basic tier services by 1999. It exempts small cable companies from rate regulation completely and abolishes all rate regulation if a LEC begins to offer comparable services in competition with a cable operator. Competition in the local exchange market and within DOD should reduce prices and provide new services. However, whether the promise of the Act is met in this regard will depend on many factors, including the activities of the industries involved and the implementation of the law's provisions by the FCC and State Commissions.

TELECOM COMPETITIVE OPPORTUNITIES

The Act eliminated Sole Source contract authority based on "regulated" services (Communication Service Authorization), thereby requiring CICA "full and open" competition for the award of contracts. However, the fact that competition may now be solicited in the local exchange market does not mean that there will be any competitors other than the local BOCs. Infrastructure costs and interconnection and access fees may preclude competition from other than the local BOCs. Competitive Local Exchange Carriers (CLECs) may not have the full range of products and services that a DOD site needs. Even though there are significant impediments to competition in the telecommunications market, e.g., excessive litigation over FCC findings regarding intercommunication and access fees, DOD has developed competitive opportunities. The Army has the Digital Switched Systems Modernization Program (DSSMP) which consists of multiple Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts for telecommunications equipment and services. The Navy has its voice video and data (VIVID) telecommunications contracts with Lucent and GTE. While these programs have established the availability of telecommunications products and services, they cannot ensure competition between the BOCs and CLECs for a particular site's telecommunications requirements.

What more can be done? Developing competitive opportunities for telecommunications requirements can be accomplished by using established FAR policies e.g., market research analysis. This would entail contacting the State Public Utility Commissions (PUCs) to determine if the State PUCs allow for competition of services. If they do, the Contracting Officer should obtain a listing of authorized CLECs within the state that could provide the required services and then communicate with these CLECs to determine their level of interest and possible participation. Where multiple CLECs respond, the Contracting Officer can then prepare competitive RFPs. Such a course of action would implement the Act and comply with CICA. Developing multiple service providers should result in lower prices and service improvements for DOD activities.

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